

TAXATION

JobKeeper Statutory Rules made

Treasurer has registered statutory rules that makes two important changes to JobKeeper including a decline in turnover test and split rates.

JobKeeper alternative turnover tests

ATO has registered statutory rules that sets out the alternative tests that can be used to determine if the decline in turnover test is satisfied.

Alternative reference periods for JobKeeper

ATO has registered a legislative instrument that sets out four reference periods for specified classes of individuals in determining the payment rate.

Attribution rules for JobKeeper actual decline test

A legislative instrument has been registered in relation to the actual decline in turnover test in JobKeeper eligibility requirements.

JobKeeper payment rate when hours not ascertainable

A Determination has been registered that sets out when the higher JobKeeper rate applies to an eligible employee of a JobKeeper registered entity.

Small business tax options during COVID-19

ATO has reminded businesses impacted by COVID-19 that they have a range of tax options to consider including claiming a deduction for losses.

Insolvency reforms announced for small businesses

Government has announced it will introduce insolvency reforms to help small businesses restructure in response to COVID-19.

Bankruptcy and director insolvent trading protections

Regulations have been made to extend the temporary insolvency and bankruptcy protections for businesses until 31 December 2020.

Federal Budget 2020 confirmed for 6 October

Treasurer has confirmed that the 2020-21 Federal Budget will be handed down on Tuesday, 6 October 2020.

STP data matching program

Services Australia has registered a notice of a data matching program with the ATO to enable it to utilise Single Touch Payroll (STP) data.

Apprentices and trainees wage subsidy data matching

Department of Education, Skills and Employment has registered a notice of a data matching program to acquire data from the ATO re SAT program.

Vic: new wave of cash grants and tax relief announced

Victorian government has announced a further \$3bn package in the form of cash grants, tax relief and cashflow support for Victorian businesses.

NSW: land tax concession extended

NSW government has announced it will extend the 25% land tax concession to landlords that provide their commercial and residential tenants with rent relief.

GST win for casino operators on commissions and rebates

Federal Court has held that commissions and rebates paid by two casinos under agreements with junket tour operators should be taken into account.

FINANCIAL SERVICES

ASIC relief for COVID-19 financial advice by tax agents extended

ASIC has extended its temporary relief measures for COVID-29 financial advice until 15 April 2021.

Fund manager fined \$1.24m for AML/CTF reporting breaches

AUSTRAC has issued an infringement notice to State Street Bank and Trust Company (SSBT) for over \$1.24m for allegedly failing to report international funds transfers.

Westpac agrees to \$1.3bn penalty for AML/CTF breaches

Westpac and AUSTRAC have agreed to a \$1.3bn penalty for over 23m alleged breaches of the AML/CTF Act.

SUPERANNUATION

AML/CTF exemption for early release of super extended

AUSTRAC has registered an instrument to extend until 31 December 2020 the temporary exemption from the customer ID procedures for super funds re early release payments.

Super inactive low balance accounts – member elections

ATO has reminded super fund members with inactive low balance accounts that they have to make an election directly to their fund to avoid funds being transferred to ATO.

Additional conditions imposed on SMSF auditors' registrations

ASIC has announced that two auditors were separately given additional conditions to their SMSF audit registration.

REGULATOR NEWS**Regulation of financial system: APRA and ACC sign MoU**

APRA and ACCC have signed an updated Memorandum of Understanding committing both regulators to a broader model of engagement.

TPB reminder about client ID checks to prevent fraud

TPB has issued a reminder to tax practitioners to take appropriate steps to validate a taxpayer's identity and not risk compromising client data.

TPB online security enhancements announced

TPB has announced that it will introduce an additional security measure to enhance its online security.

TAXATION

JobKeeper Statutory Rules made

The Treasurer has registered the [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No 8\) 2020](#).

The amending rules make two important changes. First, eligibility for JobKeeper fortnights beginning on or after 28 September 2020 is subject to a new additional eligibility test for decline in turnover. This is based on recent actual decline in turnover. Second, the rate of payment is going to be split, as well as reduced in two stages. See under the headings below.

The JobKeeper program has been extended by six months to 28 March 2021. As a result of other changes, eligible employers, business participants and religious institutions are able to enrol for JobKeeper during the extension period even where they have not previously enrolled, subject to meeting the eligibility criteria as at 1 July 2020.

Actual decline in turnover test

Under the new test, the entity must have had an actual decline in its turnover for the applicable quarter relative to its comparable quarter in 2019. This will be the quarters ended 30 September 2019 and 31 December 2019 respectively (unless an alternative period is determined by the Commissioner).

To qualify for JobKeeper payments for JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021, entities must satisfy the original decline in turnover test (now extended) and the actual decline in turnover test. Under this additional test, entities must demonstrate that their actual GST turnover has declined by the required percentage for the quarter ending 30 September 2020, relative to the entity's comparable quarter for this period.

To qualify for JobKeeper payments for JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021, an entity must have met the original decline in turnover test and also had the required actual decline in turnover for the quarter ending 31 December 2020.

An entity that can demonstrate a fall in actual GST turnover in the quarters ending 30 September 2020 and 31 December 2020 will also satisfy the original decline in turnover test, meaning that most entities enrolling for the first time will only have to demonstrate that their actual turnover has significantly declined in the previous quarter.

Qualifying entities that meet the required decline in their turnover for the applicable quarter are required to give information about their entitlement for a fortnight to the Commissioner in the approved form. (Details will certainly follow.)

An entity that qualifies for JobKeeper after meeting the actual decline in turnover test must satisfy all other conditions under the scheme, including making the required election to the Commissioner to participate and notice requirements to employees about participation in the JobKeeper scheme. Generally, any existing requirements will have already been met by entities who are already participating in the scheme.

Changes to payment rates

The JobKeeper payment rate after 28 September 2020 depends on the hours of work and paid leave for employees in the relevant reference periods (applicable also for "business engagement" by business participants and "relevant activities" by religious practitioners).

The first stage applies to JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021. During the first stage, the higher rate of JobKeeper payment is \$1,200 and the lower rate is \$750.

The second stage applies to JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021. During the second stage, the higher rate is \$1,000 and the lower rate is \$650.

The rate applicable to an employee depends on the hours the employee works, has paid leave and paid absence on public holidays in the employee's employment over an applicable "reference period" (ie as defined). If an employee's total hours were 80 hours or more for the employer over any applicable reference period, then the employer is entitled to the higher JobKeeper rate in respect of that employee. If the total hours of work and equivalent paid leave are less than 80 hours then the lower rate applies.

For all employees, there are two standard reference periods that are comprised of the 28-day periods ending at the end of the most recent pay cycle for the employee ending before:

- 1 March 2020 – the "original" reference date (generally considered to be before COVID 19 began to have a broad impact on the Australian economy); or
- 1 July 2020 – the "additional" reference date for conditions that apply to newly eligible employees of qualifying employers under the JobKeeper scheme for JobKeeper fortnights beginning on or after 3 August 2020.

These two 28-day periods comprise the last two consecutive fortnightly pay periods or last four weekly consecutive pay periods ending prior to 1 March 2020 or 1 July 2020. For employees who are paid on a different basis (eg monthly), the 28-day period will only cover a part of the pay cycle. However, other rules ensure that average hours over the pay period are identified on a pro-rated basis.

The testing for hours is a once-off test. Employers must notify the Commissioner in the approved form of relevant information, including eligible employees and the rate for which they are eligible to receive JobKeeper payments in respect of their employees. This requirement applies for JobKeeper fortnights beginning on or after 28 September 2020. However, it means there is no requirement for the entity to notify the Commissioner a second time for JobKeeper fortnights beginning on or after 4 January 2021 (as no further testing of the hours of work apply from this date to determine the rate of JobKeeper payments).

Special provision is made for JobKeeper payments to business participants and religious practitioners.

Other changes

The amending rules contain provisions that address the situation for employees of businesses that have changed hands. The Commissioner also has a number of discretionary powers, including to:

- determine a higher rate of JobKeeper payment;
- determine alternative reference periods;
- attribute certain supplies or classes of supplies as having been made at a particular time;

- specify an alternative decline in turnover test; and
- specify a modified test for certain group structures.

JobKeeper alternative turnover tests

The ATO has registered the [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Decline in Turnover Test Rules \(No 2\) 2020](#). These Rules set out the alternative tests that can be used to determine if the decline in turnover test is satisfied for the purposes of JobKeeper payments from 28 September 2020.

Under the new tests for JobKeeper eligibility that apply from 28 September, the entity must have had an actual decline in its turnover for the applicable quarter relative to its comparable quarter in 2019. It is important to note that the alternative decline in turnover tests can only be used if there is not an appropriate relevant comparison period in 2019.

There are seven alternative turnover categories, set out under the headings below, each with their own turnover test(s).

Category 1: entity is new to business

This applies where an entity commenced business after the first day of the relevant comparison period in 2019, with the result that the business did not exist for the whole relevant comparison period (and so there is no relevant comparison period in 2019).

The first alternative test compares the entity's current GST turnover for the turnover test period with the average monthly current GST turnover since the entity commenced business (multiplied by three). The second alternative test compares the entity's current GST turnover for the turnover test period with the current GST turnover of the three months immediately before 1 March 2020.

Category 2 and 3: disposals, acquisitions and restructures

This applies where an entity acquired or disposed of part of their business at, or after, the start of the relevant comparison period in 2019 which changed its current GST turnover. It can include more than one acquisition or disposal. It also applies where an entity has restructured part or all of its business at, or after, the start of the

relevant comparison period in 2019 and that restructure (or restructures) changed the entity's current GST turnover.

The alternative tests will apply to compare the entity's current GST turnover for the applicable turnover test period with the current GST turnover for the month after the month in which the disposal, acquisition or restructure occurred. If there is no whole month after the last acquisition, disposal or restructure, and before the applicable turnover test period, then the month immediately before the applicable turnover test period is used.

Category 4: entity had substantial increase in turnover

This applies where an entity has had an increase in current GST turnover by:

- 50% or more in the 12 months immediately before either the applicable turnover test period or 1 March 2020;
- 25% or more in the six months immediately before either the applicable turnover test period or 1 March 2020; or
- 12.5% or more in the three months immediately before either the applicable turnover test period or 1 March 2020.

Entities are given the option of choosing whether to use the period immediately before either the applicable turnover test period or before 1 March 2020. Each will apply to compare the entity's current GST turnover for the applicable turnover test period with the average current GST turnover from the 3 months immediately before the test period or 1 March 2020 (or divided by three if the relevant comparison period is a calendar month).

Category 5: entity affected by drought or other natural disaster

Where an entity was affected by such droughts or other natural disaster in the relevant comparison period in 2019, the alternative test will apply to compare the entity's current GST turnover for the applicable turnover test period with the current GST turnover for the same period in the year immediately preceding the year when the drought or natural disaster was declared, ie rather than 2019.

Category 6: business has an irregular turnover

This will apply to an entity that has an "irregular" current GST turnover that is not cyclical, such as can occur in the building and construction sector. The alternative test will apply to compare the entity's current GST turnover for the applicable turnover test period with the average current GST turnover from the 12 months immediately before the applicable turnover test period or 1 March 2020.

Category 7: sole trader or small partnership with sickness, injury or leave

An alternative test applies to a sole trader or small partnership if the turnover of the sole trader or partnership was affected by the sole trader or a partner not working for all or part of that period due to sickness, injury or leave.

The test is only available to those sole traders and small partnerships which do not have employees.

Alternative reference periods for JobKeeper

The ATO has registered a legislative instrument, the [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Reference Period Determination 2020](#).

It sets out four alternative reference periods for specified classes of individuals in determining whether the higher or lower JobKeeper payment rate (Tier one or Tier two) applies. The standard reference period for an eligible employee is the 28-day period ending at the end of the most recent pay cycle for the employee for the entity to end before 1 March 2020, or the 28-day period ending at the end of the most recent pay cycle for the employee for the entity to end before 1 July 2020.

The Commissioner can determine an alternative period if the Commissioner considers that this standard reference period may not be a suitable reference point.

The first category applies where the total number of hours is not representative of a typical 28-day period (eg due to sick leave, impact of bushfire, the employee is a fly-in fly-out worker etc). It applies if the hours worked in the standard reference period was less than 80 and the total was not representative. Once the total number of hours in a typical 28-day period is determined, the alternative reference period will

be the most recent 28-day period before 1 March 2020 or 1 July 2020 that is reflective of those hours.

The second category applies to eligible employees who were not employed by the employer during all or part of the standard reference period, such as an employee who started with that employer in mid-February 2020 and their first pay cycle ended before 1 March 2020.

The third specified class is for employees who commenced employment on or before 1 March 2020 or before 1 July 2020 – but their first pay cycle ended on or after those dates. As their first pay cycle did not end before 1 March 2020 (or before 1 July 2020, as the case may be), there is no 28-day period that would satisfy the definition of the standard reference period.

The fourth specified class is an employee of a business changing hands or transferred in a wholly-owned group.

Attribution rules for JobKeeper actual decline test

The ATO has registered a legislative instrument, the [Coronavirus Economic Response Package \(Payments and Benefits\) \(Timing of Supplies Made and Decline in Turnover Test\) Rules 2020 \(No 1\)](#).

An employer's eligibility for JobKeeper depends on satisfying the actual decline in turnover test (ie from 28 September 2020). This necessitates the calculation of current GST turnover. The Determination sets out the method for determining when supplies are treated as being made at a time during the test period when calculating an entity's current GST turnover. It does this by providing what it says is a simpler alternative to the GST time of supply rules.

First, the Determination treats the supplies that are not taxable as taxable in order to allocate these supplies to a test period to the same extent any GST payable on taxable supplies would be attributable to a tax period. This means GST-free supplies, supplies made by entities that are not registered or required to be registered for GST, and supplies that are made between GST group members can also be allocated to a test period – despite not being taxable supplies.

Second, it ensures the attribution rules apply to the supply by the entity even if the entity is not an entity that is subject to the attribution rules under the GST Act. For example, under the Rules an entity that is a member of a GST group is required to calculate their current GST turnover as if they were not part of a GST group, and unless they are the GST group representative, would not be the entity reporting GST payable on their GST return. It also ensures entities that are not registered or required to be registered are required to follow the attribution rules under the GST Act in calculating their current GST turnover.

JobKeeper payment rate when hours not ascertainable

The ATO has registered a legislative instrument, the [Coronavirus Economic Response Package \(Payments and Benefits\) Higher Rate Determination 2020](#). It sets out when the higher JobKeeper rate applies to an eligible employee of a JobKeeper registered entity, identifying the specific circumstances in which the Commissioner will be satisfied that determining an employee's total hours is not readily ascertainable.

Under the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020, the higher JobKeeper payment rate (ie Tier one) applies if the total hours of work, paid leave and paid absence on public holidays for their employer in any reference period was 80 hours or more (ie over a four-week period). Otherwise, the lower rate applies (ie Tier two).

The determination applies to individuals whose employer:

- does not have any necessary records of the hours in a reference period; or
- has incomplete records of those hours in a reference period.

Importantly, it does not apply if an employer can readily ascertain an employee's total hours of work.

There are three situations where the higher rate will apply.

First, the higher rate applies to employees if, in a reference period, the sum of the eligible amounts totalled \$1,500 or more in respect of a particular employee.

Second, the Tier one rate applies to employees if a written industrial award, employment contract or similar instrument governs their employment relationship

and under that agreement an employee was required to work 80 hours or more in a reference period. The example in the explanatory statement involves an employer's payroll records being corrupted and/or lost.

Third, the Tier one rate applies to employees if it can be determined, based on reasonable assumptions, that an employee's hours in a reference period were 80 hours or more. For assumptions to be "reasonable", they must be based on "verifiable information".

Small business tax options during COVID-19

The ATO has [reminded](#) businesses impacted by COVID-19 that they have a range of tax options to consider, including claiming a deduction for losses.

The ATO said sole traders and individual partners in a partnership who meet certain conditions can offset current year losses against other assessable income (such as salary or investment income) in the same income year. Otherwise, the loss can be deferred or carried forward and offset in a future year when the business next makes a profit. The ATO also noted that businesses set up under a company structure that have made a tax loss in a current year can generally carry forward that loss for as long as they want.

The ATO said it is crucial that businesses keep proper records when claiming a deduction for losses. While records must be kept for five years for most transactions, if a tax loss is fully deducted in a single income year, records only need to be kept for four years from that income year. However, there are some deductions that can't be used to create or increase a tax loss, such as donations or gifts and personal super contributions.

ATO Assistant Commissioner, Andrew Watson, said small business owners feeling overwhelmed or getting behind with their tax should contact the ATO as early as possible to find a solution.

Insolvency reforms announced for small businesses

The Government has [announced](#) that it will introduce insolvency reforms to help small businesses restructure in response to COVID-19. Key elements of the reforms include:

- introduction of a new debt restructuring process for incorporated businesses with liabilities of less than \$1 million, drawing on key features from Chapter 11 of the US Bankruptcy Code;
- moving from a one-size-fits-all "creditor in possession" model to a more flexible "debtor in possession" model which will allow eligible small businesses to restructure their existing debts while remaining in control of their business;
- a rapid 20-business day period for the development of a restructuring plan by a small business restructuring practitioner, followed by 15 business days for creditors to vote on the plan; and
- a new, simplified liquidation pathway for small businesses to allow faster and lower cost liquidation.

The Government said safeguards will be included to prevent companies from using the new processes to undertake corporate misconduct, including firms seeking to carry out illegal phoenix activity. This will include allowing creditors to convert the liquidation back to a "full" process, and preventing directors from using the process more than once within a prescribed period (proposed at seven years). Company directors seeking to use the process would also be required to declare that they believe the company is eligible and has not engaged in illegal phoenixing. Further details are set out in a [Government fact sheet](#).

Date of effect: The new insolvency processes are proposed to be available from 1 January 2021.

Bankruptcy and director insolvent trading protections

The Government has made regulations to extend its temporary insolvency and bankruptcy protections until 31 December 2020. The [Corporations and Bankruptcy Legislation Amendment \(Extending Temporary Relief for Financially Distressed Businesses and Individuals\) Regulations 2020](#) are in accord with the Treasurer's announcement. The measures were otherwise due to expire on 28 September 2020.

The regulations extend the temporary increase in the threshold at which creditors can issue a statutory demand on a company and the time companies have to respond to statutory demands they receive. The changes also extend the temporary relief for directors from any personal liability for trading while insolvent.

Date of effect: 28 September 2020 to 31 December 2020.

Federal Budget 2020 confirmed for 6 October

The Treasurer has confirmed that the 2020-21 Federal Budget will be handed down on Tuesday, 6 October 2020.

As with the recent sittings of Parliament, Mr Frydenberg [said](#) Treasury has had to modify this year's Budget arrangements at Parliament House to ensure they are compliant with the COVID-19 health restrictions. Nevertheless, the 2020-21 Budget documents will become available via <https://budget.gov.au> from 7.30 pm on Tuesday 6 October, when the Treasurer hands down his Budget Speech.

Given the extraordinary situation that has seen the Budget deferred from its usual time in May, the 2020-21 Budget will come at a critical time for the Government as it looks to set up the next phase of its COVID-19 economic response.

The Government has already allocated an unprecedented \$314 billion in support since March 2020 to help cushion the blow and stabilise the economy. The 2020-21 Budget will need to provide the correct tax and economic settings to help businesses and individuals bounce back on the other side of the crisis.

STP data matching program

Services Australia (SA) has registered a [Notice of a Data Matching Program](#) with the ATO to enable it to utilise Single Touch Payroll (STP) data. The program will involve the exchange of STP data from the ATO for individuals who have a relationship with the SA which will be matched against SA records.

The program will enable SA to:

- pre-fill employer details (as reported through STP) onto Services Australia online services for review by customers;

- support the timely confirmation of employment and establishment of child support employer withholdings (where appropriate);
- identify where there is a significant difference between STP income and the estimate the customer has provided to Services Australia, and nudging the customer to suggest that they revisit their income estimate;
- support existing debt recovery processes, including the contacting of customers with whom contact has been lost; and
- analyse the data with a view to improving Service Australia's processes.

Apprentices and trainees wage subsidy data matching

The Department of Education, Skills and Employment has registered a [notice of a data matching program to acquire data from the ATO](#) to support administration of the Supporting Apprentices and Trainees (SAT) program. The data will include information about businesses currently employing apprentices, as well as information about apprentices contained in the Training and Youth Internet Management System (TYIMS) and SmartForms completed by employers.

It is estimated the data matching will capture records that relate to around 117,000 apprentices and trainees and more than 70,000 employers. The objectives of the data matching program are to:

- confirm that the employer is eligible to receive the SAT wage subsidy;
- validate information provided by the employer claiming the SAT wage subsidy; and
- confirm that employers are not claiming both the SAT wage subsidy and JobKeeper Payment at the same time in respect of the same employee.

Vic: new wave of cash grants and tax relief announced

The Victorian government has [announced](#) a further \$3 billion package in the form of cash grants, tax relief and cashflow support for Victorian businesses. The package includes:

- \$1.1 billion in cash grants to support SME's, including \$822 million as part of the third round of the Business Support Fund;
- \$251 million dedicated Licensed Venue Fund, with grants of between \$10,000 and \$30,000 for bars, restaurants, pubs, clubs, hotels and reception centres;
- waiver of liquor license fees for 2021;

- grants of up to \$20,000 for alpine resorts to help cover resort fees in the wake of travel restrictions;
- grants of up to \$20,000 for local business groups and chambers of commerce so they can help their members adapt to a "COVID Normal" world;
- deferral of payroll tax for businesses with payrolls up to \$10 million for the full 2020-21 financial year;
- \$137 million in waivers and deferrals of charges including liquor license fees, the congestion levy and increases to the landfill levy;
- the extension of the 50% stamp duty discount for commercial and industrial property across all of regional Victoria to 1 January 2021;
- waiver of Vacant Residential Land Tax for properties that are vacant in 2020;
- \$44 million investment to equip businesses to thrive under a "COVID Normal", including \$20 million for small businesses to access off-the-shelf digital programs such as Shopify or Square Online, training and workshops designed to help businesses adapt to online operations;
- \$8.5 million boost (for marketing and digital platform expansion) to Click for Vic, a website rolled out by the government earlier to encourage Victorians to support fresh food, wine, galleries and homewares in the state;
- \$15.7 million export recovery package to address logistics and supply chain issues caused by the pandemic, and establish new export channels for Victorian exporters.

NSW: land tax concession extended

The NSW government has [announced](#) that the [Retail and Other Commercial Leases \(COVID-19\) Regulation 2020](#) (NSW) which was set to expire on 25 October 2020 will be extended to 31 December 2020. This means landlords will be able to receive up to 25% land tax concession when they provide rent relief to commercial and residential tenants in financial distress from October to December.

Tenants will be required to re-establish their eligibility under the extension to the Regulation if they wish to request further rent relief, while landlords will also be required to respond to a tenant's request for further rent relief in a reasonable time frame.

The NSW government said it has also committed \$10m to bolster the NSW Small Business Commission to deliver more mediation and advisory services to assist parties to come to agreements. "To support parties who need assistance, we have rolled out more mediators at the Small Business Commission who are helping

parties to reach mutually beneficial agreements," said the Minister for Finance and Small Business, Damien Tudehope.

GST win for casino operators on commissions and rebates

The Federal Court has held that commissions and rebates paid by two casinos under agreements with junket tour operators should be taken into account in working out the casinos' "global GST amounts" for the purposes of the special GST rules (in Div 126 of the GST Act) governing gambling supplies: [Crown Melbourne Limited & Anor v FCT \[2020\] FCA 1295](#) (Federal Court, Davies J, 10 September 2020).

Crown Melbourne and Burswood Nominees (the taxpayers) own and operate casinos in Melbourne and Perth respectively. They entered into Junket Program Agreements with junket tour operators. They are the businesses that arrange for a group of players to attend a casino together for a set period of time, playing on special gambling terms and receiving VIP treatment (called a "junket" in the casino industry). The special gambling terms may include turnover commissions (based on the volume of wagers multiplied by an agreed rate) and win and loss rebates (based on the actual wins and losses on the gambling that takes place, reduced by multiplying the win or loss by an agreed rate). As the turnover commission and rebate entitlements can only be determined at the end of the gambling period, a settlement of what is owed by, or to, the casino can only occur then.

A key element of the special rules in Div 126 is the "global GST amount". This is 1/11th of the difference between the "total amount wagered" and the "total monetary prizes" (s 126-10). The issue in this case was whether commissions and rebates under Junket Program Agreements should be taken into account in calculating the taxpayers' respective global GST amounts (as contended by the taxpayers).

The Federal Court agreed with the taxpayers. The relevant supplies for Div 126 purposes were the gambling supplies provided by the taxpayers under the junket arrangements and not the services provided by the junket tour operators in arranging the junkets. Under the junket arrangements, the commission and rebates were not separate and distinct amounts to be disintegrated from the collective win/loss results.

In the Court's view, the commission and rebates either formed part of the consideration for the taxpayers' gambling supplies or the monetary prize which the taxpayers were liable to pay on the outcome of the gambling under the junket

arrangement, depending on whether it was a net win to the casino or a net loss to the casino. Accordingly, the commission and rebates should be taken into account in calculating the global GST amounts.

FINANCIAL SERVICES

ASIC relief for COVID-19 financial advice by tax agents extended

ASIC has extended its temporary relief measures for COVID-19 financial advice until 15 April 2021. [ASIC Corporations \(Amendment\) Instrument 2020/862](#) has been registered to amend the original ASIC Corporations (COVID-19 - Advice-related Relief) Instrument 2020/355, to extend the temporary relief from 15 October 2020 until 15 April 2021.

The original ASIC Instrument [2020/355](#) implemented three temporary relief measures to facilitate retail clients receiving timely and affordable financial product advice in relation to COVID-19. It provided a temporary AFS licensing exemption to allow registered tax agents to provide certain financial product advice to their existing clients about the early release of their super under the Coronavirus condition of release without the obligation to provide a statement of advice (SoA) when certain conditions are met. The Instrument also extended the timeframe to give an SoA for time critical COVID-19 advice up to 30 business days (instead of five business days).

In addition, the Instrument includes an "urgent advice" measure that allows additional time for a financial adviser to provide an SoA to clients in relation to urgent, time-critical COVID-19 advice. An "RoA for an existing client" measure also facilitates access to timely and affordable COVID-19 advice for existing clients of financial advisers. It allows a RoA to be provided, rather than an SoA, in relation to COVID-19 advice in certain circumstances. The Instrument also extends other ASIC relief for share purchase plans and trading suspensions until 1 January 2021.

Fund manager fined \$1.24m for AML/CTF reporting breaches

AUSTRAC has issued an [infringement notice](#) to State Street Bank and Trust Company (SSBT) for over \$1.24 million for allegedly failing to report international funds transfers.

The infringement notice alleges that SSBT contravened s 45(2) of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) on 99 occasions, by failing to give to the CEO of AUSTRAC a report about the sending or receipt of an international funds transfer instruction (IFTI) within 10 days of it being sent or received. As the alleged contraventions occurred prior to 1 July 2020, the total penalty for the 99 alleged contraventions is \$1,247,400 (ie 99 x \$12,600).

Westpac agrees to \$1.3bn penalty for AML/CTF breaches

Westpac and AUSTRAC [have agreed](#) to a \$1.3bn penalty for over 23 million alleged breaches of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act). The proposed penalty and settlement of the civil penalty proceedings remain subject to approval by the Federal Court.

In reaching the agreement for the proposed penalty, Westpac admitted to contravening the AML/CTF Act over 23 million times by failing to pass on information relating to the origin of some of the international funds transfers. Westpac also admitted to failing to adequately assess and monitor the risks associated with the movement of money into and out of Australia through its correspondent banking relationships, including with known higher risk jurisdictions. It also admitted to not carrying out appropriate customer due diligence in relation to certain suspicious transactions.

SUPERANNUATION

AML/CTF exemption for early release of super extended

AUSTRAC has registered the [Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 \(No 4\)](#) to extend until 31 December 2020 the temporary exemption from the customer identification procedures for super funds making COVID-19 early release of super payments.

This follows the Government's extension of the application period until 31 December 2020 to allow those dealing with adverse economic effects of COVID-19 to access up to \$10,000 of their super (tax-free) for the 2020-21 year. The AUSTRAC Instrument facilitates the early release of super to those individuals approved by the ATO as meeting the relevant COVID-19 condition of release until 31 December 2020 (the final date for applications).

Super inactive low balance accounts – member elections

The ATO has [reminded](#) super fund members with inactive low balance accounts (ILBAs) that, from 22 June 2020, they must make an election directly to their fund to avoid having their account treated as an ILBA and transferred to the ATO. Previously, members made this election to the ATO.

A super fund is required to transfer to the ATO ILBAs with less than \$6,000 that have not received a contribution for 16 months. The ATO will then look to consolidate this money into an active account the person has with a super fund, without needing to be directed to do so by the person. However, an account is taken not to be an ILBA if the member gives an election to the super fund that the account is not an ILBA.

The ATO said there is no specific format for this election under s 20QA(1A) of the SUTLM Act. However, a fund must be satisfied the member has declared the account is not an ILBA. The member's election is valid for 16 months, and fund trustees must maintain appropriate evidence of the election.

If a fund receives the election after the ILBA has been reported and paid to the ATO, the fund should advise the member their account has been appropriately sent to the ATO.

Additional conditions imposed on SMSF auditors' registrations

ASIC has [announced](#) that two auditors were separately given additional conditions to their SMSF audit registration following alleged auditor independence breaches and audit quality deficiencies. The additional conditions were as follows:

- an auditor from Victoria must undertake additional training on SMSF audits and ethics, sit and pass the SMSF auditor competency exam, certify his independence to ASIC periodically, have three SMSF audits reviewed by an ASIC approved independent quality reviewer, and advise his professional body of the conditions; and
- an auditor from NSW will be required to complete additional training on SMSF auditing and ethics, sit and pass the SMSF auditor competency exam, provide evidence of his compliance with continuing professional development requirements, review and revise tools and templates used to perform and document SMSF audits, and advise his professional body of the conditions.

ASIC made the decisions following information about the auditors provided by the ATO under s 128P of the Superannuation Industry (Supervision) Act 1993.

REGULATOR NEWS

Regulation of financial system: APRA and ACC sign MoU

APRA and the Australian Competition and Consumer Commission (ACCC) have signed an updated [Memorandum of Understanding \(MoU\)](#) committing both regulators to a broader model of engagement with proactive information sharing.

The updated MoU, signed on 28 August 2020, seeks to strengthen the relationship between the two agencies, who have worked closely during COVID-19 on issues including resolution planning and authorisations on anti-competitive arrangements in the financial system.

Although APRA's mandate requires its primary focus to be financial soundness and stability, APRA Chair, Wayne Byres, said APRA must also balance this with a range of other considerations, including competition. Updating the MoU reflects the importance of APRA's relationship with the ACCC, and acknowledges the

importance of competition in maintaining a healthy and efficient financial system, Mr Byres said. ACCC Chair, Rod Sims, said the updated MoU will allow the ACCC and APRA to continue to share intelligence and ensure the impacts of COVID-19 on the financial sector are managed in a pragmatic and sensible way.

TPB reminder about client ID checks to prevent fraud

The TPB has issued a [reminder](#) to tax practitioners to take appropriate steps to validate a taxpayer's identity, and not risk compromising client data which may lead to fraud.

The reminder follows a recent case where an agent's registration was terminated for recklessly facilitating in excess of 100 fake tax returns and in turn, fraudulent refunds. A five-year non-application period was imposed, subsequently reduced to four years by the AAT on appeal. The agent allegedly lodged the income tax returns based on false documentation and failed to undertake any proper enquiries about the identity of the taxpayers.

TPB Chair, Ian Klug, said the TPB will be issuing a Practice Note to provide clear guidance on Proof of Identity checks and the policy around them. "All tax practitioners are bound by the Code of Professional Conduct and failing to take reasonable care when verifying an individual's identity, acts against the public interest in that it risks inaccurate or fraudulent claims and ultimately erodes trust of the tax profession," Mr Klug said.

TPB online security enhancements announced

The TPB has [announced](#) that it will introduce an additional security measure to enhance its online security. From 24 September 2020, every time members login to My Profile to access their accounts, they will be taken through a Two Factor Authentication (2FA) process.

Members are reminded that they would have used the 2FA process when setting up My Profile the first time. The TPB is now extending the 2FA process to occur every time members login to their accounts. The TPB said that this added layer of security brings it in line with industry standards.